



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31570227

Date: JUL. 9, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a fitness trainer and instructor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which she must meet at least three. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner, a fitness trainer and instructor who specializes in yoga and facial gymnastics, intends to continue her activities as a trainer and instructor in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Although the Petitioner claimed to meet the plain language requirements of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to memberships (ii), published materials (iii), judging (iv), original contributions of major significance (v), scholarly articles (vi), and high salary (ix), the Director determined that she satisfied none of them. On appeal, the Petitioner maintains eligibility for these six criteria and asserts that the Director’s decision was erroneous.

Upon de novo review, we agree with the Director’s determination that the Petitioner has not satisfied the initial evidence requirements by meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Documentation of the [noncitizen’s] membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

U.S. Citizenship and Immigration Services (USCIS) determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policymanual>. The petitioner must show that membership in the association

requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts. *Id.*

Here, the Petitioner contends eligibility for this criterion based on her membership with the International Association of Professional Facial Gymnastics Coaches. The Petitioner submitted information regarding the association, as well as her membership certificate and a document outlining the association's regulations on membership. She also submitted three letters from yoga instructors regarding the association's standards.

In a request for evidence (RFE), the Director advised the Petitioner that her initial evidence did not meet the plain language of this criterion. The Director provided a list of the types of evidence she could provide to establish eligibility and advised her of the need for certified English translations of any foreign language documentation submitted. In response, the Petitioner submitted online articles about the association and its founder.

In denying the petition, the Director determined that the Petitioner had not submitted sufficient evidence establishing her membership in the association or that the association requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Although the Director acknowledged the documentation submitted, it was noted that the documentation was not accompanied by the required certified English translations.

On appeal, the Petitioner directs our attention to a translation accuracy certificate by [REDACTED] [REDACTED] dated January 14, 2022, which was submitted with the petition and certifies the accuracy of the translation of the Petitioner's membership certificate and the association's regulations on membership. Contrary to the Director's determination, we agree with the Petitioner's assertion that a proper certificate of translation was submitted with regard to these specific documents.

Nevertheless, the submitted evidence is insufficient to meet the criterion. Specifically, the document outlining the association's regulations for membership, which provides for "full" and "corporate" members in Section 2.1, states as follows in Section 2.2:

The status of a Full Member of the Association is obtained by fully capable individuals who do not have a criminal record, recognize and comply with the Charter of the Association, pay the necessary fees on time and have a diploma of taking courses of professional trainers in gymnastics for a person (face building), accredited by the association.

This document does not demonstrate that the requirements for membership are comparable to the regulatory requirement of outstanding achievements, nor does it demonstrate that admittance to this association is determined by nationally or internationally recognized experts in the field. Rather, it suggests that any individual meeting the threshold requirements outlined above and who pay the required fees are eligible for membership.

Although the submitted certificate establishes her membership in the association, the record does not contain sufficient documentary evidence to demonstrate the membership eligibility requirements for the claimed association, how members are selected, and that the Petitioner's membership in this association

was based on being judged by recognized national or international experts as having outstanding achievements in the field of facial gymnastics. Therefore, this criterion has not been met.

Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

To fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1).

In denying the petition, the Director noted the Petitioner's submission of an article entitled [REDACTED] [REDACTED] and first noted that this article, which was submitted in English, was not accompanied by a certification from a translator. In addition, the Director noted that the article appeared to be written by the Petitioner and that the record did not contain sufficient evidence that the website on which it appeared qualifies as either a professional or major trade publication or other major media.

On appeal, the Petitioner asserts that the article referenced by the Director was intended to demonstrate her eligibility under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), and notes that the Director overlooked the intended article for consideration under this criterion, which was submitted initially in support of the petition. Upon review of the record, we agree that the Director did not consider the article entitled [REDACTED] and we will consider it here.¹

Both of the above-referenced articles were posted to www.24.kz, the website of Khabar 24, a television station reporting on news in Kazakhstan, along with information about Khabar 24 published by Wikipedia. In response to the Director's RFE, the Petitioner's counsel provided additional information about Khabar 24 in his response letter, citing information obtained from SimilarWeb Ltd.

While it appears that both articles are about the Petitioner and her work, both articles lack author information.² In addition, the articles were not shown to have been published in one of the qualifying types of media. While we note the Petitioner's submission of documentation from Wikipedia regarding Khabar 24, there are no assurances about the reliability of the content from this open, user-edited Internet site, and note that the Petitioner was advised of this evidentiary deficiency in the

¹ Because we conduct appellate review on a de novo basis, we find the Director's failure to consider this additional article published by Khabar 24 harmless error.

² We further note that both articles are submitted in English and the Petitioner asserts that Khabar 24 publishes in multiple languages. However, we note that the article [REDACTED] misspells the Petitioner's name in both the title and body of the article. While it is unclear whether the article was originally published in English or another language and thus warrants a certified translation, the Petitioner must nevertheless resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

RFE. The information from Wikipedia, therefore, will be accorded no evidentiary weight. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).³

On appeal, Petitioner's counsel refers to the RFE response, in which he referred to site traffic statistics about the www.24.kz website that he claims were obtained from the website of SimilarWeb Ltd. The Petitioner did not offer comparative circulation statistics or other evidence to corroborate her counsel's claim. Moreover, assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the record lacks such evidence. As the Petitioner submitted no other evidence to support her claim that the website qualifies as a professional or major trade publication or other major media, we agree with the Director's conclusion that she has not shown that she meets this criterion.

Evidence of the [noncitizen's] authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains multiple evidentiary elements, and the Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The first element requires that the Petitioner is an author of scholarly articles in her field. We consider these articles within two distinct areas. The first area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. The second area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner contends she qualifies for this criterion based on her article entitled [REDACTED] published on the Khabar 24 website at www.24.kz. The Director determined that the Petitioner had not established that her published work was a scholarly article intended for learned persons in her field, noting that it was written for a general public audience. On appeal, the Petitioner states that the article "intertwines her life narratives with a theoretical exploration

³ See also information from https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on July 9, 2024, which indicates that Wikipedia's content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate, or reliable information.... Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized, or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

of female physiology and an appraisal of the advantages of physical exercise,” and therefore is “emblematic of its scientific nature.”

While we acknowledge the assertions on appeal that the article explores the Petitioner’s personal journey through pregnancy and post-childbirth and discusses the benefits and positive impacts of yoga on motherhood, she has not established that the content she created constitutes a “scholarly article” or that its intended audience was “learned persons” in the field.

The second element this criterion requires is that the scholarly articles appear in a professional publication, a major trade publication, or in a form of major media. Regarding the medium in which the articles appear, the Petitioner should establish that the publication’s circulation statistics are high relative to similar publications and should also establish the publication's intended audience. *Id.*

The Director declined to consider this second element when denying the petition. Upon review, we conclude that the Petitioner did not provide sufficient evidence that the Khabar 24 website is a professional or major trade publication, or other major media. As discussed previously in this decision, the documentation from Wikipedia regarding Khabar 24 holds no evidentiary weight, and counsel’s assertions regarding Khabar 24’s site traffic were not supported by objective documentary evidence or comparative circulation statistics. We therefore cannot conclude that the website on which her article appeared qualifies as a professional or major trade publication or other major media,

Accordingly, as neither element of this criterion has been satisfied, the Petitioner has not demonstrated that she meets the requirements of this criterion.

Evidence of the [noncitizen’s] original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner must establish that not only has she made original contributions but that they have been of major significance in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

While the Director acknowledged the Petitioner’s documentation in support of eligibility under this criterion, including testimonial letters, evidence of the establishment of her own yoga studio, and supplemental evidence consisting of her training and certificates acknowledging various personal achievements, the Director concluded that the Petitioner had not provided evidence demonstrating that she had made original contributions of major significance relevant to yoga of facial gymnastics. On appeal, the Petitioner emphasizes the expansion and diversification of her educational and training domains and asserts that the Director did not afford sufficient weight to the testimonials letters offered in support of her eligibility under this criterion. She points to her establishment of her own yoga studio and her accomplishments in the field, as well as various letters of support from others in the industry, as evidence of the impact of her contributions.

The letters submitted in support of this criterion praise the Petitioner for her talents and experience.⁴ For example, letters from [REDACTED] and [REDACTED] discuss her coaching courses in the area of facial yoga and claim they helped inspire them to pursue new endeavors in the field. A letter from [REDACTED] praises the Petitioner's yoga classes and describes the benefits obtained from them, and further notes that she was also inspired to open her own yoga studio as a result. A letter from [REDACTED] compliments the Petitioner on her abilities in hatha yoga. In general, the letters express gratitude for the Petitioner's expertise and exceptional service in instruction and coaching. Although the letters praise the Petitioner for her skills, they do not explain what specific contributions the Petitioner has made to the fields of yoga and facial gymnastics, or how they are "of major significance in the field." The letters primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. The letters also describe specific events and accomplishments in the Petitioner's history, but do not establish that the Petitioner's personal accomplishments and experiences have risen to a level of constituting original contributions of major significance to the overall field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in her field as a whole).

The testimonial evidence in the record, as well as her certificates of achievement, demonstrate that the Petitioner received recognition for her accomplishments in yoga and facial gymnastics instruction and has inspired others. However, this evidence does not contain specific, detailed information explaining how her contributions have been both original and of major significance in the field. As noted by the Director, the record does not contain evidence demonstrating that her yoga strategies or techniques have been replicated or are impacting the field more broadly. While we recognize the personal accomplishments she has achieved in opening her own yoga studio and implementing her own teaching methods, the Petitioner has not demonstrated that her contributions rise to a level of major significance in the overall field. Having a diverse skill set is not a contribution of major significance in-and-of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance to the field.

B. Summary and Reserved Issues

Although the Petitioner also claims to satisfy two additional criteria related to judging and high salary on appeal, we need not reach these issues. We reserve them as she cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

⁴ Although we discuss a sampling of letters, we have reviewed and considered each one.

III. CONCLUSION

Because the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, determining that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has submitted documentation of her achievements but has not demonstrated that these achievements have translated into a level of recognition that constitutes sustained national or international acclaim or demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Furthermore, the record does not otherwise demonstrate that the Petitioner is one of the small percentage of individuals who have risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.